

garding disapproval of such change within thirty-five days of publication of notice or within such longer period as the Commission may designate up to ninety days of such date.

Subsec. (b)(3)(A). Pub. L. 111-203, §916(c)(1), substituted “shall take effect” for “may take effect” and inserted “on any person, whether or not the person is a member of the self-regulatory organization” after “charge imposed by the self-regulatory organization”.

Subsec. (b)(3)(C). Pub. L. 111-203, §916(c)(2), substituted second sentence for former second sentence which read as follows: “At any time within sixty days of the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) of this subsection, the Commission summarily may abrogate the change in the rules of the self-regulatory organization made thereby and require that the proposed rule change be refiled in accordance with the provisions of paragraph (1) of this subsection and reviewed in accordance with the provisions of paragraph (2) of this subsection, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter.”, added third sentence, and substituted “this subparagraph” for “the preceding sentence” in last sentence.

Subsec. (b)(4)(D). Pub. L. 111-203, §916(d), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: “The Commission shall abrogate any change in the rules of such a clearing agency made by a proposed rule change which has taken effect pursuant to paragraph (3) of this subsection, require that the proposed rule change be refiled in accordance with the provisions of paragraph (1) of this subsection, and reviewed in accordance with the provisions of paragraph (2) of this subsection, if the appropriate regulatory agency for such clearing agency notifies the Commission within thirty days of the date of filing of such proposed rule change of such appropriate regulatory agency’s (i) determination that the rules of such clearing agency as so changed may be inconsistent with the safeguarding of securities or funds in the custody or control of such clearing agency or for which it is responsible and (ii) reasons for such determination.”

Subsec. (b)(10). Pub. L. 111-203, §916(b)(1), added par. (10).

Subsec. (h)(4). Pub. L. 111-203, §929F(e), in introductory provisions, substituted “any person who is, or at the time of the alleged misconduct was, an officer or director” for “any officer or director” and “such person” for “such officer or director”.

2000—Subsec. (b)(7). Pub. L. 106-554, §1(a)(5) [title II, §202(b)(1)], added par. (7).

Subsec. (b)(8). Pub. L. 106-554, §1(a)(5) [title II, §202(b)(2)], added par. (8).

Subsec. (b)(9). Pub. L. 106-554, §1(a)(5) [title II, §202(b)(3)], added par. (9).

Subsec. (d)(3). Pub. L. 106-554, §1(a)(5) [title II, §202(c)], added par. (3).

1998—Subsec. (c)(5). Pub. L. 105-353 realigned margins.

1993—Subsec. (b)(5), (6). Pub. L. 103-202, §106(c)(1), added pars. (5) and (6).

Subsec. (c)(5). Pub. L. 103-202, §106(c)(2), added par. (5).

1975—Pub. L. 94-29 amended section generally, substituting provisions covering the registration, responsibilities, and oversight of self-regulatory organizations by the Commission for provisions covering only the Commission’s powers with respect to exchanges and securities, with a view to consolidating and expanding the Commission’s oversight powers with respect to self-regulatory organizations, their members, participants, and officers, and with a view to giving the Commission identical powers over all self-regulatory organizations, including registered clearing agencies, and substantially strengthening the Commission’s ability to assure that these organizations carry out their statutory responsibilities.

1970—Subsec. (e)(1). Pub. L. 91-410 substituted “December 31, 1970” for “September 1, 1970”.

1969—Subsec. (e). Pub. L. 91-94 substituted “September 1, 1970” for “September 1, 1969” in par. (1), and “\$945,000” for “\$875,000” in par. (4).

1968—Subsec. (e). Pub. L. 90-438 added subsec. (e).

1962—Subsec. (d). Pub. L. 87-561 substituted “April 3, 1963” for “January 3, 1963” and “\$950,000” for “\$750,000”.

1961—Subsec. (d). Pub. L. 87-196 added subsec. (d).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 916 and 929F(e) of Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 717(c) of Pub. L. 111-203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711-754) of title VII of Pub. L. 111-203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111-203, set out as a note under section 1a of Title 7, Agriculture.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, except for amendment of subsec. (g) by Pub. L. 94-29 which is effective 180 days after June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

CONSTRUCTION OF 1993 AMENDMENT

Amendment by Pub. L. 103-202 not to be construed to govern initial issuance of any public debt obligation or to grant any authority to (or extend any authority of) the Securities and Exchange Commission, any appropriate regulatory agency, or a self-regulatory organization to prescribe any procedure, term, or condition of such initial issuance, to promulgate any rule or regulation governing such initial issuance, or to otherwise regulate in any manner such initial issuance, see section 111 of Pub. L. 103-202, set out as a note under section 78a-5 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

REVIEW OF REGULATORY STRUCTURES AND PROCEDURES WITH RESPECT TO PENNY STOCKS; REPORT

Pub. L. 101-429, title V, §510, Oct. 15, 1990, 104 Stat. 957, directed Comptroller General, in consultation with Securities and Exchange Commission, to conduct a review of rules, procedures, facilities, and oversight and enforcement activities of self-regulatory organizations under Securities Exchange Act of 1934, with respect to penny stocks (within the meaning of 15 U.S.C. 78c(a)(51)), and, within one year after Oct. 15, 1990, to submit a report on the review including a statement of findings and such recommendations as the Comptroller General considered appropriate with respect to legislative or administrative changes.

§ 78t. Liability of controlling persons and persons who aid and abet violations

(a) Joint and several liability; good faith defense

Every person who, directly or indirectly, controls any person liable under any provision of this chapter or of any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable (including to the Commission in any action brought under paragraph (1) or (3) of

section 78u(d) of this title), unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.

(b) Unlawful activity through or by means of any other person

It shall be unlawful for any person, directly or indirectly, to do any act or thing which it would be unlawful for such person to do under the provisions of this chapter or any rule or regulation thereunder through or by means of any other person.

(c) Hindering, delaying, or obstructing the making or filing of any document, report, or information

It shall be unlawful for any director or officer of, or any owner of any securities issued by, any issuer required to file any document, report, or information under this chapter or any rule or regulation thereunder without just cause to hinder, delay, or obstruct the making or filing of any such document, report, or information.

(d) Liability for trading in securities while in possession of material nonpublic information

Wherever communicating, or purchasing or selling a security while in possession of, material nonpublic information would violate, or result in liability to any purchaser or seller of the security under any provisions of this chapter, or any rule or regulation thereunder, such conduct in connection with a purchase or sale of a put, call, straddle, option, privilege or security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security or with respect to a group or index of securities including such security, shall also violate and result in comparable liability to any purchaser or seller of that security under such provision, rule, or regulation.

(e) Prosecution of persons who aid and abet violations

For purposes of any action brought by the Commission under paragraph (1) or (3) of section 78u(d) of this title, any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this chapter, or of any rule or regulation issued under this chapter, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.

(f) Limitation on Commission authority

The authority of the Commission under this section with respect to security-based swap agreements (as defined in section 206B of the Gramm-Leach-Bliley Act) shall be subject to the restrictions and limitations of section 78c-1(b) of this title.

(June 6, 1934, ch. 404, title I, §20, 48 Stat. 899; May 27, 1936, ch. 462, §6, 49 Stat. 1379; Pub. L. 88-467, §9, Aug. 20, 1964, 78 Stat. 579; Pub. L. 98-376, §5, Aug. 10, 1984, 98 Stat. 1265; Pub. L. 104-67, title I, §104, Dec. 22, 1995, 109 Stat. 757; Pub. L. 105-353, title III, §301(b)(12), Nov. 3, 1998, 112 Stat. 3236; Pub. L. 106-554, §1(a)(5) [title II, §205(a)(3), title III, §303(i), (j)], Dec. 21, 2000, 114 Stat. 2763, 2763A-426, 2763A-456; Pub. L. 111-203, title VII, §762(d)(6), title IX, §§929O, 929P(c), July 21, 2010, 124 Stat. 1761, 1862, 1865.)

AMENDMENT OF SUBSECTIONS (d) AND (f)

Pub. L. 111-203, title VII, §§762(d)(6), 774, July 21, 2010, 124 Stat. 1761, 1802, provided that, effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761-774) of title VII of Pub. L. 111-203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, subsections (d) and (f) of this section are amended by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”.

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title”. See References in Text note set out under section 78a of this title.

Section 206B of the Gramm-Leach-Bliley Act, referred to in subsecs. (d) and (f), is section 206B of Pub. L. 106-102, which is set out in a note under section 78c of this title.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111-203, §929P(c), inserted “(including to the Commission in any action brought under paragraph (1) or (3) of section 78u(d) of this title)” after “controlled person is liable”.

Subsec. (e). Pub. L. 111-203, §929O, inserted “or recklessly” after “knowingly”.

2000—Subsec. (d). Pub. L. 106-554, §1(a)(5) [title III, §303(i)], amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “Wherever communicating, or purchasing or selling a security while in possession of, material nonpublic information would violate, or result in liability to any purchaser or seller of the security under any provision of this chapter, or any rule or regulation thereunder, such conduct in connection with a purchase or sale of a put, call, straddle, option, privilege, or security futures product with respect to such security or with respect to a group or index of securities including such security, shall also violate and result in comparable liability to any purchaser or seller of that security under such provision, rule, or regulation.”

Pub. L. 106-554, §1(a)(5) [title II, §205(a)(3)], substituted “, privilege, or security futures product” for “or privilege”.

Subsec. (f). Pub. L. 106-554, §1(a)(5) [title III, §303(j)], added subsec. (f).

1998—Subsecs. (e), (f). Pub. L. 105-353 redesignated subsec. (f) as (e).

1995—Pub. L. 104-67, §104(1), substituted “liability of controlling persons and persons who aid and abet violations” for “Liabilities of controlling persons” in section catchline.

Subsec. (f). Pub. L. 104-67, §104(2), added subsec. (f).

1984—Subsec. (d). Pub. L. 98-376 added subsec. (d).

1964—Subsec. (c). Pub. L. 88-467 extended application of provisions of subsec. (c) by substituting the prohibition against any officer or director of, or an owner of securities issued by, a company from hindering, delaying, or obstructing the preparation or filing of any report, document, or information required to be filed under this chapter for existing provisions applicable only to filings by companies with securities registered on a national securities exchange or subject to the provisions of section 78o(d) of this title.

1936—Subsec. (c). Act May 27, 1936, inserted “or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title”.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 929O and 929P(c) of Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 762(d)(6) of Pub. L. 111-203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761-774) of title VII of Pub. L. 111-203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111-203, set out as a note under section 77b of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-67 not to affect or apply to any private action arising under this chapter or title I of the Securities Act of 1933 (15 U.S.C. 77a et seq.), commenced before and pending on Dec. 22, 1995, see section 108 of Pub. L. 104-67, set out as a note under section 77l of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-376 effective Aug. 10, 1984, see section 7 of Pub. L. 98-376, set out as a note under section 78c of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-467 effective Aug. 20, 1964, see section 13 of Pub. L. 88-467, set out as a note under section 78c of this title.

CONSTRUCTION OF 1995 AMENDMENT

Nothing in amendment by Pub. L. 104-67 to be deemed to create or ratify any implied right of action, or to prevent Commission, by rule or regulation, from restricting or otherwise regulating private actions under this chapter, see section 203 of Pub. L. 104-67, set out as a Construction note under section 78j-1 of this title.

§ 78t-1. Liability to contemporaneous traders for insider trading

(a) Private rights of action based on contemporaneous trading

Any person who violates any provision of this chapter or the rules or regulations thereunder by purchasing or selling a security while in possession of material, nonpublic information shall be liable in an action in any court of competent jurisdiction to any person who, contemporaneously with the purchase or sale of securities that is the subject of such violation, has purchased (where such violation is based on a sale of securities) or sold (where such violation is based on a purchase of securities) securities of the same class.

(b) Limitations on liability

(1) Contemporaneous trading actions limited to profit gained or loss avoided

The total amount of damages imposed under subsection (a) of this section shall not exceed the profit gained or loss avoided in the transaction or transactions that are the subject of the violation.

(2) Offsetting disgorgements against liability

The total amount of damages imposed against any person under subsection (a) of this section shall be diminished by the amounts, if any, that such person may be required to disgorge, pursuant to a court order obtained at the instance of the Commission, in a proceeding brought under section 78u(d) of this title relating to the same transaction or transactions.

(3) Controlling person liability

No person shall be liable under this section solely by reason of employing another person

who is liable under this section, but the liability of a controlling person under this section shall be subject to section 78t(a) of this title.

(4) Statute of limitations

No action may be brought under this section more than 5 years after the date of the last transaction that is the subject of the violation.

(c) Joint and several liability for communicating

Any person who violates any provision of this chapter or the rules or regulations thereunder by communicating material, nonpublic information shall be jointly and severally liable under subsection (a) of this section with, and to the same extent as, any person or persons liable under subsection (a) of this section to whom the communication was directed.

(d) Authority not to restrict other express or implied rights of action

Nothing in this section shall be construed to limit or condition the right of any person to bring an action to enforce a requirement of this chapter or the availability of any cause of action implied from a provision of this chapter.

(e) Provisions not to affect public prosecutions

This section shall not be construed to bar or limit in any manner any action by the Commission or the Attorney General under any other provision of this chapter, nor shall it bar or limit in any manner any action to recover penalties, or to seek any other order regarding penalties.

(June 6, 1934, ch. 404, title I, §20A, as added Pub. L. 100-704, §5, Nov. 19, 1988, 102 Stat. 4680.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (c), (d), and (e), was in the original “this title”. See References in Text note set out under section 78a of this title.

EFFECTIVE DATE

Section not applicable to actions occurring before Nov. 19, 1988, see section 9 of Pub. L. 100-704 set out as an Effective Date of 1988 Amendment note under section 78o of this title.

§ 78u. Investigations and actions

(a) Authority and discretion of Commission to investigate violations

(1) The Commission may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated, is violating, or is about to violate any provision of this chapter, the rules or regulations thereunder, the rules of a national securities exchange or registered securities association of which such person is a member or a person associated, or, as to any act or practice, or omission to act, while associated with a member, formerly associated with a member, the rules of a registered clearing agency in which such person is a participant, or, as to any act or practice, or omission to act, while a participant, was a participant, the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm, a person associated with such a firm, or, as to any act, practice, or omission to act, while associated